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April 18, 1973

DEPARTMENT OF LAW LETTER OPINION NO. 73-9-L (R-18)

REQUESTED BY: JOHN M. LITTLE
Director, Planning and Research
Arizona State Land Department

- QUESTIONS:
1. Does an applicant for a commercial lease whose application is denied by the Arizona State Land Commissioner on the grounds that a lease had been previously granted to another applicant have a right to appeal from such a decision?
 2. If the applicant has a right to appeal, does such right to appeal prohibit the State Land Department from putting into effect, for the thirty day appeal period, the previously granted lease?

- ANSWERS:
1. Yes.
 2. No.

The relevant statutes are:

§ 37-132. Powers and duties

A. The state land commissioner shall:

* * *

5. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.

6. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals provided for by § 37-213.

§ 37-134. Appeal from decision of
commissioner; notice; record;
trial

A. In addition to appeals from final decisions of the commissioner to the superior court as otherwise authorized by law, an appeal from a final decision of the commissioner other than a final decision relating to the classification or appraisal of lands or improvements, made pursuant to the powers and duties conferred upon him by law, whether relating to the administration of state lands or other departments or agencies of state under his jurisdiction, may be taken by any person adversely affected by the decision to the superior court of the county in which the major portion of the land, property, or rights involved in the decision is located.

§ 37-214. Appeal from decision of commissioner relating to classification or appraisal; findings and records of board; appeal from decision of board of appeals or commissioner not relating to classification or appraisal

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D. An appeal from a final decision of the board of appeals or a final decision of the commissioner not relating to the classification or appraisal of lands or improvements may be taken by the commissioner or any person adversely affected by the decision to the superior court of the county in which the major portion of the land or improvements involved in the appeal is located.

Rule 37-281.012 of the State Land Department General Rules
and Regulations Governing the Leasing of State Lands:

Where an application for lease or permit covers land already under lease or permit for the same purposes, such application will be rejected by the Commissioner to the extent that the lands described therein are included within an existing lease or permit.

It is clear that A.R.S. § 37-132 clearly vests power in the Arizona State Land Commissioner to lease state school trust lands for commercial purposes. See A.R.S. § 37-132.A.6. This power, however, is not totally unrestricted, but instead is limited by: (1) the right of the board of appeals to approve any commercial lease; and (2) the duty of the Commissioner to follow the rules and regulations of the State Land Department, which have the effect of law. See Tucson Warehouse and Transfer Company v. Al's Transfer, Inc., 77 Ariz. 323, 271 P.2d 477 (1954); Civil Service Board of City of Phoenix, v. Warren, 74 Ariz. 88, 244 P.2d 1157 (1952).

Under the former limitation the Commissioner may make the initial determination on whether or not to deny or grant an application before it reaches the board of appeals for approval. Under the latter limitation the Commissioner is bound specifically here by Rule 37-281.012, which requires that he reject an application for land already under lease or permit for the same purposes.

It is clear from the above, then, that the Commissioner not only has the authority to deny a lease on land currently under lease but also is required to do so by the rules and regulations. This order or denial of an application is a "decision" of the Commissioner, and the right to appeal vests under A.R.S. §§ 37-134 and 37-214 in any person aggrieved by any decision of the Commissioner. Accordingly, it can be concluded that an applicant denied a lease by the Commissioner for land under lease to another has a statutory right to appeal.

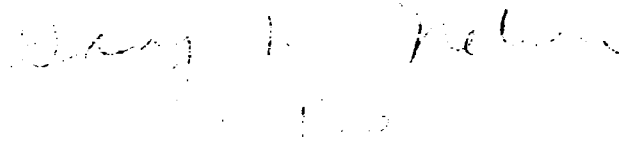
Having established that applicant has a statutory right to appeal, the answer to the second question lies in the determination of the scope of the appeal. The right of an aggrieved party to appeal under A.R.S. §§ 37-134 or 37-214 is not unconfined. The appeal is confined to the extent of the decision affecting the aggrieved party. So, in the case of an applicant being denied a lease on the grounds that the land is previously granted to another for lease, the scope of the right to appeal runs only to the decision denying the application, and not to that decision previously granting the lease.

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Since the granting of the previous lease cannot be appealed, the required thirty day appeal period does not affect the original granting of the lease, but instead affects only the decision by the Commissioner not to lease to the applicant.

Therefore, it is concluded from the above that the right of appeal from the decision denying the application for land on which a lease was previously granted does not prohibit the State Land Department from putting the earlier lease into effect before expiration of the statutory thirty day appeal period.

Respectfully submitted,



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